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Initial reports of States parties due in 1995

Addendum

Georgia

[21 November 1995]

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REPUBLIC OF GEORGIA

Initial Report of the Republic of Georgia on measures giving effect to the International Covenant on Civil and Political Rights

INTRODUCTION

(a) This report is the initial document prepared in accordance with article 40.1 of the International Covenant on Civil and Political Rights and reflects the existing situation with respect to human rights in the Republic of Georgia. The report covers the period from January 1994 to August 1995.

(b) The report has been prepared by the Committee for Human Rights and Ethnic Relations on the basis of material provided by the ministries and departments concerned, the Federation of Free Trade Unions and non-governmental organizations active in the field of human rights.

(c) Some of the articles have been passed over without comment. The necessary explanations are given in this introduction.

(d) The report does not include any comments on article 5 as none of the situations envisaged in that article arose during 1994. However, the corresponding constitutional guarantees are provided by article 39 of the new Constitution.

(e) No information is given with respect to article 11 since there is no principle in Georgian law according to which a person may be imprisoned merely on the ground of inability to fulfil a contractual obligation. No complaints or appeals concerning infringements of this provision of the Covenant have been made to the authorities.

(f) There was considered to be no need to comment on article 16 since the Georgian legal system does not recognize any restrictions on the right of everyone to recognition everywhere as a person before the law.

(g) It should be noted that the text of the Covenant has not been widely publicized in Georgia and the Covenant itself has not been integrated into the legislative process. The Committee for Human Rights and Ethnic Relations is taking steps to have the Covenant translated into the official language of the Republic and the text circulated.

The United Nations Human Rights Centre in Geneva has drawn up a programme of consultative and technical assistance for Georgia in the field of human rights. Under this programme, in particular, all the basic human rights documents will be translated into the official language of the Republic in order to make them more accessible to the Georgian public.

Principal ethnic and demographic characteristics of the country and its people

On 1 January 1995 the total population of Georgia was 5,407,400.

According to the census data, in 1989 there were:
(1) 3,787,000 Georgians, (2) 437,000 Armenians, (3) 341,000 Russians, (4) 308,000 Azerbaijanis, (5) 164,000 Ossetians, (6) 100,000 Greeks, (7) 96,000 Abkhazians, (8) 52,000 Ukrainians, (9) 33,000 Kurds,

(10) 24,000 Jews, (11) 9,000 Belorusians, (12) 6,000 Assyrians, (13) 4,000 Tatars, (14) 45,000 others.

In 1994, per capita national income was 2,572,695 coupons.

In the same year, the average monthly wage of workers in the national economy was 2.5 million coupons.

The growth of inflation resulted in a steady decline in the standard of living. In December 1994, the purchasing power of the population was only one-ninth of what it was in December of the previous year.

Tighter control over the issue of credit by the National Bank of Georgia resulted in a significant strengthening of the national currency. In August 1994, the exchange rate stood at 2,200,000 coupons to the United States dollar, whereas by 1 January 1995 it had reached 1,300,000 to the dollar.

Official unemployment was 3.5 per cent (70,000 officially registered as unemployed). There is, however, quite a high level of hidden unemployment. According to State Labour Exchange data, the total number of unemployed is 468,000 (22 per cent of the labour force).

The breakdown of the population by educational level (according to the 1989 census) is as follows:

- primary: 347,673
- secondary: 1,473,980
- secondary special: 759,735
- higher: 613,498

Monthly income (per capita) is 340,440 coupons (1993).

Natural population growth (per thousand) is:

- birth rate - 12.6
- death rate - 10.1 (for 1993)
- infant mortality (per 1,000 live births) - 18.3 (1993).

The average life expectancy for men is 69 years and for women 78 years (1989 census). The birth rate has fallen. At the same time, in Georgia one woman of child-bearing age out of every four has never been married. This is chiefly attributable to social and economic factors associated with the sharp decline in living standards.

Most of the population are Orthodox Christians. The Georgian Orthodox Church is autocephalous and headed by the Catholicos-Patriarch of All Georgia Ilya II. There are numerous Muslims, together with members of other religions and religious groups.

The organs of government

The supreme legislative body is Parliament, which was elected on 11 October 1992. The previous parliament (Supreme Soviet) was dissolved as a result of the armed intervention provoked by the anti-democratic behaviour of the regime of President Z. Gamsakhurdia (December 1991 to January 1992).

The Georgian Parliament is a unicameral body consisting of 225 deputies.

The highest official is the Head of State, the popularly elected Chairman of Parliament.

This concentration of the highest offices in the two most important branches of government in a single person is a temporary phenomenon of the transition period.

The supreme executive body is the Cabinet of Ministers, the administration of the regions being in the hands of the "gamgeoba" (local authorities). A shortcoming of this system is the fact that the provincial "gamgebeli" (administrators) are centrally appointed officials rather than elected representatives. This too is a temporary measure determined by the special requirements of the transition period.

In 1994, the post of Regional Representative of the Head of State was introduced. The Regional Representative is empowered to coordinate and oversee the affairs of the provinces. This post was created to test out the machinery of government on the way to federalizing the structure of the Georgian State.

At present, the Georgian judicial system consists of the following bodies:

- municipal, district and national courts;
- the supreme courts of the autonomous republics;
- the Supreme Court of Georgia.

At all levels, other than district, there are bodies to hear appeals.

The new Constitution provides for the creation of a body fundamentally new to the Georgian judicial system - a Constitutional Court (art. 83).

At the legislative level, a Permanent Commission for the Protection of Human Rights and National Minority Affairs operates in the national Parliament. At the executive level, a Committee (Ministry) for the Protection of Human Rights and Ethnic Relations operates under the Cabinet of Ministers.

People who claim that their rights have been violated may apply directly to the law enforcement agencies and the organs of justice, including the courts. Within its competence, the Committee for Human Rights and Ethnic Relations may also consider complaints from citizens.

The Parliament of the Republic of Georgia has recognized the primacy of the fundamental rules of international law over the domestic legislation. The country has already acceded to or ratified 14 international instruments on human rights, thereby binding itself to bring its domestic legislation into conformity with the requirements of international law.

The international human rights agreements to which the Republic of Georgia is party are listed below.

Convention on the Prevention and Punishment of the Crime of Genocide (entered into force for the Republic of Georgia on 11 October 1993; in what follows the dates of entry into force for the Republic of Georgia are indicated in parentheses after the name of the convention); International Covenant on Civil and Political Rights (3 August 1994); Optional Protocol to the International Covenant on Civil and Political Rights (3 August 1994); International Covenant on Economic, Social and Cultural Rights (3 August 1994); Convention on the Rights of the Child (2 July 1994); Convention on the Elimination of All Forms of Discrimination Against Women (26 November 1994); Convention Against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment (26 November 1994); Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field (14 March 1994); Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (14 March 1994); Convention Relative to the Treatment of Prisoners of War (14 March 1994); Convention Relative to the Protection of Civilian Persons in Time of War (14 March 1994); First Protocol Additional to the Geneva Convention on the Protection of Victims of International Armed Conflicts (14 March 1994); Second Protocol Additional to the Geneva Convention on the Protection of Victims of International Armed Conflicts (14 March 1994); Convention Against Discrimination in Education (4 February 1993).

Legislative and other human rights instruments

The Edict of the Chairman of Parliament/Head of State No. 335 of 4 October 1994 "On certain measures to ensure the protection of human rights in Georgia" notes, in particular, that in Georgia it has not yet been possible to set up and operate a complete system for the protection of human rights. The Edict provides for certain additional measures to safeguard human rights in the Republic. All government departments are requested, in cooperation with the Committee for Human Rights and Ethnic Relations, to develop proposals and measures to ensure the practical implementation of the requirements of the United Nations instruments and the international covenants and optional protocols thereto. The Edict makes the Committee responsible for coordinating the activities of State, public and other organizations relating to the protection of political, civil, economic, social and cultural rights in accordance with the provisions of the international covenants and conventions. The Committee is authorized to make written representations to the appropriate officials with a request that they examine the facts of human rights violations. The results of the examination must be communicated to the Chairman of the Committee.

The Committee may, within its sphere of competence, obtain on demand any necessary information from the State and governmental agencies, organizations and other services concerned.

During the period under review, Parliament passed the following laws with a bearing on human rights:

- State Power Act (06.11.92)
- Law Amending and Supplementing the Criminal Procedure Code of the Republic of Georgia (21.03.93 and 17.02.94)
- Laws Amending the Labour Code of the Republic of Georgia (02.03.93 and 13.04.94)
- Laws Supplementing the Criminal Code of the Republic of Georgia (17.03.93 Nos. 179-1s and 180-1s; 08.07.93)
- Citizenship of the Republic of Georgia Act (25.03.93)
- Law Amending the Universal Military Service Act (04.05.93)
- Law Amending and Supplementing the Administrative Offence Code of the Republic of Georgia (13.05.93, 08.07.93)
- Legal Status of Aliens Act (03.06.93)
- Property Rights Act (15.07.93)
- Immigration Act (20.07.93)

- Emigration Act (27.07.93)

- Alien Temporary Entry, Stay and Departure Act (27.07.93)

- Police Act (27.07.93)

- Law on the Procedure for Considering Applications, Complaints and Appeals to State Agencies, Enterprises, Establishments and Organizations (Irrespective of their Organizational or Legal Form) (24.12.93)

- Citizens' Associations Act (14.06.94)

- Psychiatric Care Act (01.05.95).

Article 1 (Right of Self-Determination)

The State system of the Republic of Georgia was established (Declaration of the Supreme Soviet of 9 April 1994) precisely on the basis of the principle of self-determination, just as the Soviet Union was beginning to break up. It is therefore only natural that it should respect that right.

Georgia is building a civil society based on the nations and ethnic groups which live within its borders. Its respect for the above-mentioned principle is further confirmed by the existence upon its territory of autonomous entities and by its policy on national minorities which offers them broad cultural autonomy and combines the principles of universality of citizenship and ethnic distinctiveness and originality.

During the dissolution of the Soviet Union the separatist tendencies in two of the autonomous regions of the Republic of Georgia - Abkhazia and South Ossetia - gathered strength, a process that was further encouraged by the objective difficulties associated with the transition from the framework of law and order inherited from the previous regime to the new legislative system. The course of events in the above-mentioned autonomous regions took a tragic turn leading to the unleashing of what became in point of fact an armed conflict involving the use of heavy weapons. The forces of the Government of Georgia ceased engaging in open armed conflict in South Ossetia in 1992 and in Abkhazia in 1994.

In April 1994, Georgian and Abkhaz representatives, with the participation of Russia and under the aegis of the United Nations, signed an agreement on the return of displaced persons to their homes. Peace-keeping forces, nominally representing the CIS but actually consisting of Russian troops, were stationed along the River Ingura, which separates the conflict zone from the rest of Georgia.

In November, in the course of negotiations aimed at settling the conflict the leadership of the Abkhaz administration unilaterally proclaimed their independence of Georgia, thereby throwing down a challenge to the internationally recognized principle of preservation of the territorial integrity and inviolability of the borders of the State.

The leaders of Georgia have repeatedly declared that as part of Georgia, Abkhazia had and will have a State system and extensive rights.

The conflict on the territory of the former South Ossetia is being settled with the broad participation of the OSCE. The representatives of that international organization have developed a package of proposals for the political and administrative organization of the former autonomous region. In accordance with a Edict of the Head of State a coordinating group has been set up to assist in establishing the public law status of the regions of Georgia.

One of the central concerns of this group is the determination of the status of Abkhazia and South Ossetia.

The leadership of Georgia is strictly observing the United Nations principle of self-determination of peoples subject to the preservation of territorial integrity, the inviolability of existing borders and the preservation of national sovereignty.

Georgia is home to 94 different nationalities. An infrastructure has been created to help minorities achieve ethnic self-realization in terms of their language and culture. The State is setting up and supporting newspapers and other publications for minorities in Russian, Armenian, Azerbaijani, Greek and other languages. There are more than 500 ethnic schools in operation and the capital of the Republic has two Russian theatres (including a youth theatre) and one Armenian theatre. Parliament is currently considering a national minorities bill drawn up by the Committee for Human Rights and Ethnic Relations.

Situation in Abkhazia

From the moment when, in 1993, as a result of the actions of the separatist forces and their accomplices the central government temporarily lost jurisdiction over the territory of the autonomous republic, the excesses inflicted by the separatists on the peaceful Georgian and non-Georgian population continued throughout the period under review. The mass murders, ethnic cleansing, deportations, home-burning and hostage-taking never ceased. Following the signing of the quadripartite agreement (Moscow, 4 April 1994) the brutal treatment of the peaceful population of Abkhazia not only continued but became even more unbridled.

According to the information available, in 1994 more than 800 people were killed in the Gali region of Abkhazia alone.

There is a close link between the situation in Abkhazia and the refugee question. At the Budapest meeting of the leaders of the 52 countries parties to the OCSE it was officially recognized that the separatists had carried out and were still carrying out ethnic cleansing in the region. According to the data compiled by the Republican Committee on Refugees and Population, altogether 225,000 refugees have been forced to leave Abkhazia.

The problem of the return of the refugees to their homes is being actively discussed within the framework of the peaceful settlement of the conflict under the aegis of the United Nations. In one of the latest reports by the United Nations General Secretariat "On the situation in Abkhazia (Georgia)", dated 14 October 1994, the context of the negotiations concerning the return of refugees is analysed in detail. The Georgian side finds that the negotiations are proceeding extremely slowly and in the security zone monitored by the peace-keeping forces of the Russian Federation there is no solid guarantee of the safety of the returnees.

The Republic of Georgia is experiencing serious difficulties in connection with the upholding of the rights of the forcibly displaced. In 1992, on the basis of the 1951 Convention on the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the State Council of the Republic adopted a decree/first document defining the status of the forcibly displaced and refugees. On 30 December 1992, the Head of State issued Edict No. 41 to improve the social protection and legal position of refugees from certain regions of Georgia identified as zones of conflict.

In order to put a stop to ethnic cleansing and mass murder in the areas controlled by the separatists and ensure the return of the refugees to Abkhazia and the former South Ossetia, everything possible must be done to intensify the negotiating process with the participation of the United Nations, OCSE and other international organizations, and to set up special aid funds for refugees of the type proposed in the above-mentioned Secretariat report.

A separate statement on the situation in Abkhazia is appended to this Report.

Article 2 (Right to a remedy)

In accordance with the legislation in force, the right to a remedy is regulated by the Criminal and Criminal Procedure Codes of the Republic.

The State Council of the Republic of Georgia restored the 1921 Constitution, with the necessary modernization. However, legislative practice and the application of the law are beset by certain conflicts and contradictions. Currently, during the transition period, until an orderly system of domestic legislation can be established, certain laws and regulations dating from both Soviet times and the period of President Gamsakhurdia's regime remain in force. At the same time, various laws passed by the present Parliament have also entered into effect. In some cases the old law may not adequately protect the interests of the public while the new one may not yet have been passed.

As a rule, the court which considers a case is that in whose jurisdiction the violation (offence) was committed. A higher court may take up any criminal matter subject to the jurisdiction of a lower court, on the basis of a reasoned decision, in which case it acts as the court of first instance.

The Georgian judicial system is based on the principle of two instances which means that the judgements, sentences, decisions and orders of a court which have not entered into legal effect can be appealed against only once and only directly to the higher court. Judgements, sentences and decisions of the Supreme Court are not subject to appeal or challenge. In civil and criminal proceedings a distinction is made between courts of first instance, courts of appeal and review courts, the function of the latter being to hear appeals against judgements, sentences, decisions and orders which have already entered into legal effect.

The figure of the State Procurator used to be all-powerful. He directed all the criminal investigations carried out by the Ministry of Internal Affairs and was empowered to oversee the activities of the organs of justice. The Procurator's Office was responsible for supervising the activities of the Supreme Court. This system laid justice open to political and other influences, especially in the provinces.

Under the new Constitution (art. 91), the Georgian Procurator's Office is an agency of the judicial branch which institutes criminal proceedings, oversees investigations and the execution of sentences and presses charges on behalf of the State. The powers of the Procurator's Office and its organization and procedures are determined by the Organization Act.

The foundations of the infrastructure for the protection of human rights are only just being laid. Thus, on 22 April 1992, at the initiative of the Head of State acting within the framework of the executive power, the Committee for Human Rights and Ethnic Relations was established. Its function was to serve as a source of information on human rights and minorities for the Government and to study and observe the situation with respect to legislation and judicial and administrative decisions in the field of human rights. The Committee also considers complaints and applications by citizens concerning the violation of human rights and makes recommendations with respect to their restoration, advises on all questions relating to human rights, helps to educate the public and promotes the dissemination of knowledge of human rights and the means of protecting them.

In 1994, more than 1,000 applications were made to the Committee and 694 petitions and complaints from 470 persons were accepted by its Chairman. Most of the applications were connected with infringements of the right to inviolability of the home (292) or the rights of refugees and prisoners (131), with social questions (89), with the unsatisfactory functioning of administrative and local government services (63), etc.

However, it has not yet been possible to realize the Committee's full potential. This is because it lacks statutory powers, as well as occupying an ambiguous position as part of the structure of the executive branch. In this connection, the main parties have reached agreement on introducing into the new Constitution an article providing for the creation of a totally new office - that of Ombudsman. It is proposed that this office, which will uphold international legal standards, should be one of the main engines of judicial and legal reform aimed at strengthening the role of the protection of fundamental human rights and freedoms.

As a rule, the Office of the Regional Representative of the Head of State also includes an official specially responsible for questions relating to human rights.

In accordance with the Covenant, preference must be given to judicial remedies and procedures. In 1994, the Supreme Court alone considered 1,734 cases, 1,142 of them civil. Five hundred and twenty cases were examined under the appeals procedure and 613 under the review procedure. Because of the imperfections of the judicial system situations arise in which citizens are unable to exercise their right to have their case examined without an

unwarranted delay. Judicial remedies are not being sufficiently actively pursued. This is largely because the public is ill-informed about the law and no longer holds the judicial system in the same respect. Moreover, it is difficult to convince the judiciary of the supremacy of human rights in the practical interpretation and application of the law.

The political leaders of the country are making a special effort to improve the work of the investigation agencies and investigative practices in general. An edict of the Head of State concerning urgent measures to suppress torture and other cruel, inhuman and degrading forms of treatment in places of detention and correction is being prepared. Nevertheless, violations - cases remitted for further inquiry into blunders made during the preliminary investigation, unjustified extensions of the period of detention in custody, unreasonable choice of preventive measures - are still not uncommon. Experience with the consideration of complaints shows that the procurators are often overzealous and seek to have people taken into custody even for acts for which imprisonment is not mandatory.

The authorities are doing everything possible to bring to light and eradicate such practices.

According to information provided by the Office of the Procurator General, out of 145 statements of claim in civil matters involving infringements of the Labour Legislation Code, 100 were the subject of favourable decisions. A total of 1,870 letters and requests relating to various violations of human rights were dealt with under the general review procedure and satisfaction was given in 488 of these cases. Altogether 984 protests and 2,079 representations were made to the various organizations. Of these 206 protests and 91 representations were associated with infringements of the Labour Legislation Code and 26 and 34 respectively with housing rights, while 19 and 134 respectively were dealt with under the procedure for considering and responding to citizens' petitions.

Article 3 (Equal rights for men and women)

Women's interests, particularly where the regulation of female labour is concerned, are protected by the domestic legislation and especially by articles 156-157 of the still operative Labour Legislation Code of the Georgian SSR which cover:

- work for which female labour may not be used;
- restrictions on night work, overtime and business travel for women;
- the transfer to lighter work of pregnant women, nursing mothers and women with children up to 18 months old;
- paid maternity leave;
- guarantees concerning the acceptance and dismissal of pregnant women, nursing mothers, etc.

The following data relate to the social and economic situation of women in the Republic of Georgia:

- employment rate - 47.7 per cent (data for 1992);

- members of parliament - 4 per cent;

- in government - 1.8 per cent.

Women make up 52 per cent of the total population of the Republic.

Levels of education (in per cent)

	Men	Women
Primary	16.2	10
Secondary special, technical	60	68
Higher	15.6	16.8
With no education	8.2	5.2

Employment in various sectors of the economy (in per cent)

	Men	Women
Industry	19.8	22.3
Agriculture	25.1	25.1
Education, culture	17.4	3.5
Trade	6.3	4.5
Health care, physical training	11.2	2.9
Construction	2.6	12.0
Transport	2.0	9.9
Other	15.0	17.8

Clearly, women are under-represented in the legislature and in government.

In Georgia, women have a higher level of education than men. Incidentally, they account for 39 per cent of Georgia's technical intelligentsia. Despite this, women in general are not highly qualified since after marriage two-thirds of them give up trying to improve their qualifications. Most women do not have jobs appropriate to the education they have received. Following the introduction of a free market, some managers, on various pretexts, are occasionally refusing to employ women.

According to sociologists, working women have little free time: most of it is taken up with household duties. Men spend two to three times less time on household chores than women. Consequently, women have much less personal free time than men. It should be noted that abortion remains the principal family planning technique.

Women are currently much less active in the public sphere, which is largely attributable, on the one hand, to the sharp deterioration of the

economic situation and, on the other, to the irrational negative stereotype of the "zviadistka" (female supporter of the former President Zviad Gamsakhurdia) which has taken root in the minds of the public.

Georgia has no purely feminist movement that confines itself to feminist problems. The "Tetri Mandili" movement is internationally known, but its range of activities is by no means restricted to purely feminist issues. It should be noted that in the course of their activities women members of parliament rarely attempt to raise questions concerning the protection of the rights of representatives of the "weaker" sex.

There is no evidence of serious infringements of the rights of women in the Republic. However, it may be assumed that they exist in the non-State sector of the economy which is still inadequately regulated. The number of sexual infringements is not very great (62 in 1994, 59 cleared up).

The Republic of Georgia has already acceded to the corresponding international convention (see list in the section on "Organs of Government").

The present domestic legislation, like all preceding constitutions, guarantees the equal right of men and women to the enjoyment of all civil and political rights.

Article 4 (Public emergencies)

Provisions regulating the public emergency and martial law regimes are contained in article 46 of the new Constitution.

According to article 1 of the Public Emergency Act, passed on 11 December 1990 (amended and supplemented on 14 September 1993), the proclamation of a public emergency is a temporary measure introduced in accordance with the law to ensure the safety of citizens in the event of natural calamities, large-scale disasters and catastrophes, epidemics, epizootics and mass disorder.

Public emergencies on the national territory are proclaimed by Parliament or the Head of State. The application of the provisions of the Act may not be used to justify discrimination on the basis of nationality, race, language, religion, sex, colour or social origin (art. 4). The proclamation of a public emergency must indicate the reasons why it is being introduced, its duration and its territorial limits. The Head of State may extend the duration of a public emergency he has proclaimed or terminate it ahead of time, with the consent of Parliament (art. 3). The Ministry of Internal Affairs will immediately inform the Secretary-General of the United Nations of the introduction and termination of a state of public emergency.

The amendments introduced on 14 September 1993 make general provision for controlling the activities of the mass media, whereas previously the Act included provisions concerning the prohibition of the use of photocopiers, audio and video technology, radio and television transmission equipment, etc. The criminal liability of strike leaders and people who impede the activities of State agencies and organizations during a public emergency was also abolished.

Article 6 (Right to life)

Right to life provisions are contained in articles 104 to 109 of the Criminal Code of the Republic of Georgia which lay down severe penalties for infringements of that right.

Death penalty

In 1991, Georgia became the first republic of the former USSR to take steps to abolish the death penalty. On 20 March, Parliament abolished the death penalty for four types of non-violent economic crime (arts. 88, 89, 96*, and 186 of the Criminal Code). On 2 August 1991, the death penalty was abolished for two more offences: evasion of active military service (art. 82) and the hijacking of aircraft (art. 242-2).

The War Council introduced a moratorium on the death penalty following the publication, on 21 February 1992, of the Declaration reinstating the 1921 Constitution, article 19 of which provides for its abolition. On 3 August 1993, the State Council headed by E. Shevardnadze, which replaced the War Council, abolished the death penalty for 14 types of military offence, namely: insubordination (art. 256), assaulting a superior (art. 260), desertion (art. 265), absence without leave in time of war (art. 266), intentionally destroying or damaging military property (art. 269), breach of guard duty regulations (art. 273), breach of the regulations on the performance of battlefield duties (art. 275), abuse of power, exceeding authority and neglect of duties (art. 278), surrendering or abandoning to the enemy the means of waging war (art. 279), abandoning a sinking warship (art. 280), leaving the field of battle without authorization or refusing to operate a weapon (art. 281), voluntary surrender (art. 282), looting (art. 284), and using violence on the population in an area of military operations (art. 285). However, the increase in crime, the intensification of armed conflict, the intervention of mercenaries, and ethnic cleansing and genocide directed against the civilian population in Abkhazia halted the process of bringing the law into conformity with the 1921 Constitution as far as punishment is concerned. Thus, articles have been introduced into the Criminal Code to provide for the death sentence for two types of offence: participation as a mercenary in an armed conflict (art. 65-1, introduced on 17 March 1993) and genocide (art. 66-1, introduced 8 July 1993).

It should particularly be stressed that before a death sentence can be carried out the case must be considered by the Pardons Board which reports to the Head of State. This applies even if no petition for pardon has been received from the person convicted.

The decision whether to pardon a person sentenced to death is the prerogative of the Head of State.

The Committee for Human Rights and Ethnic Relations has drawn up a proposal for the Cabinet of Ministers concerning the abolition of the death penalty provided for in articles 78-1, 209-1 and 258.

In 1994, the pardons group in the Office of the Head of State received 1,445 petitions for pardon, including 34 from persons sentenced to death. Of the latter 22 were considered by the Head of State; of the remainder 6 are awaiting his decision and 6 are still in process of being examined.

Of the 22 petitions for pardon from persons sentenced to death considered by the Head of State 14 were favourably received, the death sentence being commuted to 20 years imprisonment.

Under the laws of the Republic of Georgia, persons under the age of 18 may not be sentenced to death (art. 24 of the Criminal Code). The same applies to women who were pregnant at the time the offence was committed or sentence passed (art. 24 of the Criminal Code).

The question of abolishing the death penalty is again being widely debated both in Parliament and among the public. However, the seriousness of the crime situation is making it impossible to arrive at a positive solution of the question at this stage.

Thus, in 1994 there were 578 murders in the Republic, 367 of which were cleared up. The corresponding figures for 1993 were 878 and 407. There were 2,027 robberies, of which only 756 were cleared up (the corresponding figures for 1993 were 3,485 and 735).

Acts of terrorism, whose victims include prominent politicians and high officials, have become widespread. In the last two years, G. Chanturia, the leader of one of the country's main parties, the National Democratic Party, G. Gulua, Deputy Minister of Internal Affairs, M. Kurdadze, the public procurator for the capital of the Republic and others have fallen victim to the terrorists. None of these crimes has been solved, which is a source of anxiety both for the government and for the public at large.

The presence of the death penalty in the Georgian legislation cannot, of course, be attributed solely to the crime wave. A serious effort will have to be made to prepare public opinion and change people's mentality.

Health care

One of the most important conditions for ensuring the right to life is full access to health care. Within the context of the transition to a market economy, the medical institutions are gradually switching over to self-financing ("paid health care"). Given that the country is in the grip of a severe economic crisis, this is bringing into question the principle of free access to health care and hence the right to life.

List of Articles of the Criminal Code of the Republic of Georgia Providing for or Abolishing the Death Penalty

Providing for the death penalty	Abolishing the death penalty
Art. 65 - Treason	Art. 82 - Evasion of military service

Providing for the death penalty	Abolishing the death penalty
Art. 65-1 - Genocide	Art. 88 - Counterfeiting and forgery
Art. 66-1 - Participation as a mercenary in an armed conflict	Art. 89 - Violation of foreign exchange regulations
Art. 67 - Espionage	Art. 96-1 - Large-scale misappropriation of government or public property
	Art. 189 - Taking bribes
Art. 68 - Act of terrorism against a representative of a foreign government	Art. 242-2 - Hijacking aircraft
Art. 69 - Sabotage	
Art. 78 - Brigandage	
Art. 78-1 - Disorganizing the work of corrective labour institutions	
Art. 104 - Murder with aggravating circumstances	
Art. 177 - Rape	
Art. 209-1 - Attempt on the life of a police officer	
Art. 258 - Resisting a superior or forcing him to breach regulations	

Article 7 (Torture, cruel, inhuman or degrading treatment or punishment)

Georgia acceded to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 November 1994.

The adherence of the Republic to the generally recognized standards of international law finds expression in article 17 of the new Constitution which forbids the use of torture or other cruel, inhuman or degrading treatment or punishment.

Article 116 - "Beating and torture" - of the Criminal Code provides for various forms of punishment - from corrective labour to imprisonment - for "beating or other forms of violence causing physical suffering for the victim" and also for "systematic beating in the nature of torture".

It must be recognized that individual cases of the use of physical violence by the personnel of law enforcement agencies do arise. This chiefly occurs at the time of detention or arrest and sometimes during questioning for the purpose of obtaining a confession or information.

Despite the practical difficulties associated with the implementation of the provisions of the above-mentioned Convention, the Committee for Human Rights and Ethnic Relations is working to protect the right of prisoners and detainees not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. Members of the Committee regularly visit prisons and take appropriate action in response to complaints from prisoners and detainees. In each case the complaint is properly investigated and if it is found to be valid the guilty are punished.

An example of such a gross violation of the law was the affair of the Khidasheli family, several members of which (and two of their friends) were detained on suspicion of murdering L. Chovelidze (mother of T. Chovelidze) who died on 9 April 1989. In order to obtain a confession, officers of the metropolitan police used physical force extending to torture. After receiving a number of complaints, the Committee examined this case and decided it should be referred to the public procurator's office with a recommendation that it carry out a further objective investigation and call to account the police officers who had used illegal methods on the persons concerned. As a result, the preventive measure was changed for two members of the Khidasheli family and one of their friends, and criminal proceedings were brought against the police officers guilty of the abuse.

It is especially important to note the widespread interest aroused in Georgia and abroad by the court proceedings in case No. 7493810 (so-called "Domukhovskii-Gelbakhian" affair). On the basis of statements made by the defendants (19 altogether), the international non-governmental organization Human Rights Watch/Helsinki made accusations of numerous violations of proper legal procedure, including the beating of prisoners. In fact, two incidents of this kind took place. Thus, on the basis of the complaint by the defendant G. Gelbakhian that he was assaulted in his cell, criminal proceedings were brought against another prisoner who committed the offence. The prisoner Chogovadze was convicted, and the prison officer responsible for the maintenance of order was dismissed from the prison service.

Concern is also being aroused among the public and the rights protection organizations by the violation of the rights of persons held in detention centres for investigation and psychiatric examination, which has been going on for a year now. Contrary to the provisions of article 12 of the Psychiatric Care Act passed on 1 May 1995, the medical examination of people under investigation to determine their mental state is still being carried out in a specialized medical institution of the Ministry of Internal Affairs. Of course, this sort of examination should not be carried out by a departmental medical institution.

Prison conditions remain bad (for further details see the section of the Report concerning the rights of prisoners).

In general, it should be pointed out that, without exception, the use of torture and other cruel, inhuman or degrading treatment or punishment runs counter to the political course and line of action of the Government of Georgia, a country in the process of constructing a democratic society. A

corresponding Edict of the Head of State is being prepared (cf. the comments on art. 2).

Article 8 (Prohibition of forced labour)

The provisions of this article of the Covenant, which prohibit slavery and forced labour, are not applicable to Georgia where in the period under review no cases of slavery or forced labour were recorded. The regulations relating to convict labour are contained in articles 25 and 28 of the present Criminal Code, as amended and supplemented (for details see comments on art. 10 below).

In the Ministry of Defence system human rights are protected by the servicemen's welfare department of the personnel administration. In the military units of the Ministry of Defence the infringements relate mainly to the economic aspects of human rights (inadequate rations, shortage of uniforms, lack of opportunities for rest and recovery, etc.), which is one of the main causes of desertion among men serving for fixed periods. In the period of conscription there were cases of men of call-up age being detained and sent by force to military commissariats, the MIA and district police departments.

The rights of servicemen are also occasionally violated by the law enforcement agencies. There are cases of illegal checking of documents and unauthorized room searches. The crime wave is also affecting servicemen. In February 1995 alone two attacks on officers were recorded: Lieutenant Colonel M. Dzhandzhanidze and Major G. Karmazanashvili were assaulted and the latter was also robbed.

Alternative service

In accordance with article 12 of the General Military Service Act, citizens who object to active military service on conscientious or religious grounds may be called up for alternative military service under the Alternative Military Service Act of 14 June 1991.

Article 9 (Right to liberty and security of person)

The rights laid down in this article are fully reflected in article 18 of the new Constitution. According to this article (paras. 1 and 2), personal liberty is inviolable and no one may be deprived of his liberty or have it restricted other than by judgement of a court. Anyone arrested or detained is immediately informed of his rights and the reasons for his arrest or detention; from the time of arrest a person may request and receive legal assistance (para. 5).

According to the Police Act of the Republic of Georgia (27 July 1993), the police must respect and protect the rights and freedoms of the individual irrespective of civil or social status, property, racial or national origin, sex, age, education, language, creed or political or other opinion.

In particular, the police must afford persons detained or arrested the opportunity to exercise their right to judicial remedy in accordance with the law.

Before the Constitution was adopted, the rights of arrested and detained persons were determined by the Criminal (CC) and Criminal Procedure (CPC) Codes which contain many provisions dating from the Soviet period. According to article 10 of the CPC, "no one may be placed under arrest otherwise than on the basis of a court order or with the approval of the procurator. The procurator must immediately free anyone unlawfully deprived of his liberty or detained beyond the period prescribed by law or sentence". Articles 194 - "Unlawful arrest or detention" - and 195 - "Obtaining evidence under coercion" - of the CC provide for penalties in the form of various periods of imprisonment (from 1 to 10 years) for persons who commit such offences. The choice of preventive measure is governed by a special section of the CPC (arts. 80-94). In particular, according to these articles, a preventive measure is imposed by the court in a reasoned decision which indicates the offence of which the person is suspected or accused and the grounds for selecting that particular preventive measure. As a rule, persons detained in custody may be held in places of detention for not more than three days; detention in custody while the case is investigated may not last for more than two months, except in specially stipulated circumstances.

In 1994, the law enforcement agencies of the Republic of Georgia detained 3,510 persons. The procurator authorized the arrest of 3,282 of these detainees, and 237 were released because of changed circumstances or for other reasons.

The present Georgian legislation does not lay down procedures for compensating people for unlawful arrest, although there is such a provision in the Constitution (art. 18.7). However, such persons may seek redress from the courts. The question of a compensation mechanism will be settled in the context of the ongoing reform of the system of legal proceedings.

The provisions concerning pre-trial detention were also unsatisfactory as they allowed the investigating agencies and the courts to have people held in custody indefinitely. The law also provided for clearly excessive limits on the time for which people could be held in pre-trial detention (up to 18 months). The new Constitution tightly regulates these aspects also. According to article 18.3, a detainee must appear in court within 48 hours. Within the next 24 hours the court must decide to have him arrested or to place "some other restriction on his liberty" or release him. According to paragraph 6 of the same article, the period of detention of a person suspected of an offence may not exceed 72 hours, and a person against whom charges have been preferred may not be held in pre-trial detention for more than 9 months.

Article 10 (Rights of persons deprived of their liberty)

At present, there are 15 different prison colonies, prisons and detention centres operating in Georgia.

In actual fact, the situation in the Georgian penitentiary system falls far short of meeting generally recognized international standards, although the main requirements of article 10 of the Covenant are satisfied. Detention procedures are regulated by article 25 of the Criminal Code.

On 1 January 1995, the Georgian penitentiaries had 7,803 inmates. The most important general shortcomings of the system are as follows:

- the material and technical infrastructure is in critical condition. The correctional institutions are generally based on establishments not previously intended for these purposes (industrial buildings, barracks, etc.). After many years of constant use they are practically worn out;

- the extremely poor medical care. The fact that last year 120 people died in places of detention speaks for itself. Tuberculosis and various forms of cardiovascular disease are prevalent. For example, in the Ksans corrective labour colony No. 39, intended for a special contingent affected by tuberculosis, 150 detainees are unable to obtain active treatment. Providing such treatment for this number of tubercular detainees would cost $20,000. Neither the colony nor the Ministry of Internal Affairs has such resources at its disposal.

A catastrophic situation has arisen in clinic 123/10 (republican hospital) where the sanitary conditions, equipment and even elementary living conditions do not bear scrutiny. A similar situation prevails in the women's and children's correctional establishments.

In October 1994, the Head of State E. Shevardnadze issued an edict empowering the Committee for Human Rights and Ethnic Relations to inspect the conditions in which prisoners and detainees were being held and to request the authorities to deal with any violations discovered.

One of the many problems of the penitentiary system is the fact that the staff are too few and ill-provided for.

At the initiative of the Committee for Human Rights and Ethnic Relations, a draft Resolution of the Cabinet of Ministers "On measures making material-technical, social and financial provision for the penal institutions of the Ministry of Internal Affairs of the Republic of Georgia" has been prepared.

The situation is especially serious in the pre-trial detention centres, where the work of the administration is governed by obsolete regulations on pre-trial detention which are already more than a quarter of a century old. These centres are overcrowded (in Tbilisi, Kutaisi, Zugdid and Batumi). Instead of the regulation area of 2.5 m^2, there is, on average, less than 1 m^2 per detainee. Inmates do not have their own individual bunks but often have to sleep in two or three shifts, without bedding. These conditions encourage the spread of parasitic and infectious diseases.

On 1 June 1995, Parliament passed a decree on amnesty which affects approximately every tenth prisoner. This measure, together with others, will result in some improvement in the conditions in places of detention.

Article 12 (Right to liberty of movement and free choice of residence)

The exercise of this right by citizens of Georgia and persons lawfully present on its territory is protected by the Constitution (art. 22).

According to the Emigration Act (20 July 1993), a citizen of the Republic of Georgia has the right to emigrate from Georgia or travel to his permanent residence in another State. No restrictions may be placed on this right except in the cases specified by law.

The aim of the Act is, in accordance with universally recognized principles, to protect the right of a citizen of Georgia to leave his own country and return to it.

If an international agreement provides for rights different from those established in the Georgian legislation, the provisions of international law are applied.

The Act regulates the question of the emigration of under-age children.

A citizen of Georgia who has emigrated has the right to enter the Republic at any time, witho